



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1770

MICHAEL T. HURLEY,

Petitioner,

VS.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS**

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Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS
AND REQUEST FOR SUMMARY REVERSAL**

Michael T. Hurley, your Petitioner herein, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois, and the Petitioner further requests Summary Reversal.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois is reported

verbatim herein. (App. "A", p. 1). It has not as yet been officially reported. The opinions of the Trial Court, dismissing the indictments, in the Circuit Court for the Seventh Judicial Circuit of Illinois, Sangamon County, is reported verbatim herein. (App. "B", p. 1; App. "C", p. 1).

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on March 18, 1976. (App. "A", p. 1.) The jurisdiction of this Court is invoked under the provisions of Title 28, U.S.C., Section 1257(3).

QUESTIONS PRESENTED

Whether the Cannabis Control Act, which permits the penalty imposed to be increased by weight for "any substance containing" violates the accused's rights under due process and equal protection of the law.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth Amendment, Constitution of the United States:

"No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *"

Fourteenth Amendment, Constitution of the United States:

"Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. * * *"

Illinois Revised Statutes, Ch. 56½, Sec. 704: (1973)

"It is unlawful for any person knowingly to possess cannabis. Any person who violates this section with respect to:

(a) not more than 2.5 grams of any substance containing cannabis is guilty of a Class C misdemeanor;

(b) more than 2.5 grams but not more than 10 grams

of any substance containing cannabis is guilty of a Class B misdemeanor;

(c) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of a Class A misdemeanor; provided, that if any offense under this subsection (c) is a subsequent offense, the offender shall be guilty of a class 4 felony;

(d) more than 30 grams but not more than 500 grams of any substance containing cannabis is guilty of a Class 4 felony; provided that if any offense under this subsection (d) is a subsequent offense, the offender shall be guilty of a Class 3 felony;

(e) more than 500 grams of any substance containing cannabis is guilty of a Class 3 felony."

Illinois Revised Statutes, Ch. 56½, Sec. 705: (1973)

"It is unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis. Any person who violates this section with respect to:

(a) not more than 2.5 grams of any substance containing cannabis is guilty of a Class B misdemeanor;

(b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of a Class A misdemeanor;

(c) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of a Class 4 felony;

(d) more than 30 grams but not more than 500 grams of any substance containing cannabis is guilty of a Class 3 felony;

(e) more than 500 grams of any substance containing cannabis is guilty of a Class 2 felony."

STATEMENT OF CASE

The Constitutional provisions raising the federal question were first raised in the Trial Court by motion to dismiss the indictment, and thereafter ruled upon in the Supreme Court of Illinois. The defendant was indicted pursuant to State statute, which prohibits the delivery or possession of marijuana and graduates the classification of the offense according to the amount of marijuana involved. While the statute proscribes cannabis, the classifications are not determined by the weight of the cannabis, but rather by the weight of "any substance containing" cannabis.

The Trial Court determined the statute unconstitutional on the basis that the classification of the offense based upon the quantity of the substance delivered without regard to the weight or percentage of cannabis contained therein, do not reasonably relate to the accomplishment of the purpose of controlling delivery and possession of substances containing cannabis through the imposition of criminal sanctions.

The indictment against the defendant was in two counts, charging delivery and possession.

The Trial Court dismissed the indictment, and thereafter a direct appeal was taken in the Supreme Court of Illinois. The Supreme Court of Illinois affirmed the constitutionality of the statute in question, and stated that the Illinois legislators may have believed that any given amount of drug can be distributed to a greater number of people and thus have a greater potential to be harmful, if it is mixed with another substance. The Court further said "While the soundness of that belief may be questioned, the determination is one for the legislature to make, and we cannot

find that the classification schemes at issue have no reasonable basis."

REASONS FOR GRANTING THE WRIT

I.

The Supreme Court of Illinois has decided federal questions of substance in conflict with the due process principles enunciated in this Court. It has departed from the accepted and usual course of judicial proceedings, and its sanction of such departure resulted in an erroneous judgment and miscarriage of justice, and deprived the Petitioner of his rights to due process of law and equal protection of the law.

The defendant was indicted under the provisions of the Cannabis Control Act, which prohibits the delivery or possession of marijuana. *Illinois Revised Statutes*, 1973, Ch. 56½, Sec. 704(d) and Sec. 705(d). The statute graduates the classification of the offense according to the amount of marijuana involved. However, while the statute proscribes cannabis, the classifications of the offense are not determined by the weight of the cannabis; but, rather by the weight "of any substance containing" cannabis. The statute merely requires the Government to weigh the ingredients which come to them in a homogeneous form and determine whether cannabis is contained therein. The weight will be both for the cannabis and any other materials mixed with it. As such, the Act permits the most crucial determination with respect to punishment to be based on a measurement which bears little relation to the actual amount delivered or possessed.

The infirmity is best seen by the following illustration. Three men, red, white and blue, each obtain two grams of cannabis. Red rolls his two grams of cannabis into one cigarette. White mixes his two grams with an equal amount

of tobacco and rolls his mixture into two cigarettes, the total weight of both his cigarettes being four grams. Blue bakes his two grams into a brownie, which weighs 31 grams.

Though each man still possesses two grams of cannabis, the penalty provision of the possession statute authorizes a maximum penalty of 90 days for red, 180 days for white, and three years for blue.

It was the defendant's contention that a system of classification which increases punishment as the weight of the containing substance increases, without regard for the actual amount of marijuana itself, is not a reasonable means of preventing the delivery or possession of cannabis. The trial court agreed, and found the statute as applied by the indictment in question, to be violative of the State and Federal guarantees of due process and equal protection of the law.

That the legislature may prohibit the delivery or possession of cannabis is without question. However, this court has held that due process requires that if the evil sought to be remedied by statute affects public health, safety, morals or welfare, a means reasonably directed toward achievement of those ends must be adopted. *People v. Fries*, 42 Ill.2d 446, 250 N.E.2d 149, 150 (1969). It is the Appellee's contention that a system of penalties which increases punishment as the weight of the containing substance increases, without regard for the amount of the cannabis involved, is not a reasonable means of preventing the delivery or possession of the cannabis.

There is a presumption of validity of legislative classifications and the burden of rebutting that presumption is on the party challenging the validity of the classification. Although appropriate respect should be given to an act of a legislative classification, there is a judicial obligation to

ensure that the power to classify has not been exercised arbitrarily, and if it has been, the legislation cannot be justified under the label of classification. *People v. McCabe*, 49 Ill.2d 338, 275 N.E.2d 407, 409 (1971).

The State's basis for punishing an individual for the delivery or possession of cannabis is that cannabis is deemed harmful and the populace should be deterred from using it. No attempt is made here to dispute the authority of the legislature to prohibit the delivery or the possession of cannabis. Nor is any challenge being made here to the scheme of punishing one more severely for the greater amount of the cannabis that he possesses or delivers. The legislature has a legitimate interest in attempting to stop the trafficking of cannabis, and this would appear to be a reasonable means of trying to achieve that objective.

As the Cannabis Control Act establishes various classifications of offenders, based upon various weights of the marijuana involved, the rule established by this court in *Grasse v. Dealer's Transport Company*, 412 Ill. 179, 106 N.E.2d 124 (1952), is applicable, where the court observed on page 193-194 that:

"For these classifications to be deemed constitutional as in all cases involving classification, it must appear that the particular classification is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bear a rational relation to the evil to be remedied and the purpose to be attained by the statute, otherwise the classification will be deemed arbitrary and in violation of the constitutional guarantees of due process and equal protection of the law. (citations cited)."

As the Act has been applied in the case at bar, it cannot meet either of the *Grasse*, supra., criteria. The placement of the defendant within a class apart from other offenders,

simply because of the mixture in which the cannabis is contained, is not based upon any rational difference in persons or objects.

The classifications in Section 704(d) and 705(d) do not bear a rational relation to the purposes of the Act. If the purpose is to punish according to the quantity of marijuana possessed, allowing quantity to be determined by the weight of the mixture, perverts the statutory intent. The Act, and the indictment based upon it, work to deny the petitioner due process and equal protection of the law. The trial judge, therefore, properly dismissed the charge against the defendant. The Supreme Court of Illinois should be reversed.

In *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522, 527 (1974), the court held that the weight of a controlled substance is an essential element going to the substance of the charge and rejected the contention that the weight of the substance was a consideration for sentencing only. The court also noted the similarity between the statutory scheme of the Controlled Substance Act, and the theft statute, by stating at page 527:

"In Larceny cases where the grade or degree of the offense depends on value, value then becomes a material fact essential to establish the grade or degree of the offense and it has been stated that the jury should incorporate its finding in the verdict."

In *Mullaney v. Wilbur*, 421 U.S. 684, 44LE2508, 95 S.Ct. 1881 (1975), in a habeas corpus proceedings, the district court for the District of Maine vacated a murder conviction. The Court of Appeals affirmed, and the United States vacated and remanded, 414 U.S. 1139, 94 S.Ct. 889, 39 L.Ed.2d 96. On remand, the Court of Appeals, 496 F.2d 1303, again held that the main statutory scheme respecting murder and manslaughter violated due process requirements. Certiorari

was granted. The Maine murder statute, Me.Rev.Stat., Title 17, Sec. 2651, provides:

"Whoever unlawfully kills a human being with malice aforethought, either express or implied, is guilty of murder and shall be punished by imprisonment for life."

The manslaughter statute, Title 17, Sec. 2551, in relevant part, provides:

"Whoever unlawfully kills a human being in the heat of passion, on sudden provocation, without express or implied malice aforethought * * * shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than twenty years. ****"

The Maine court reaffirmed its earlier opinion that murder and manslaughter are punishment categories of the single offense of felonious homicide. Accordingly, if the prosecution proves a felonious homicide, the burden shifts to the defendant to prove that he acted in the heat of passion on sudden provocation in order to receive the lesser penalty prescribed for manslaughter. The Court of Appeals, in examining Maine law as construed by the Maine Supreme Judicial Court, stated that the presence or absence of the heat of passion on sudden provocation results in significant differences in the penalties and stigma attached to conviction. The issue before the court in *Mullaney*, supra, was whether the Maine rule requiring the defendant to prove that he acted in the heat of passion on sudden provocation accords with due process. The court stated, at page 1890, that:

"The requirement of proof beyond a reasonable doubt has a vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of a possibility that he may lose his liberty upon

conviction and because of a certainty that he would be stigmatized by the conviction.

* * *

Moreover, use of the reasonable doubt standard is indispensable to command the respect and confidence of the community and applications of the criminal law. It is critical that the moral force of the criminal law not be deluded by a standard of proof that leaves people in doubt whether innocent men are being condemned."

The court stated that they could discern no unusual hardship on the prosecution that would justify requiring the defendant to carry the burden of proving a fact so critical to criminal culpability. The court held that the due process clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in a homicide case.

Therefore, it was held that the classification of the offense and the degrees of penalty imposed, turn upon the existence or non-existence of a fact, with the fact becoming an element of the offense, and not as the Appellant contends, merely a matter of punishment. Due process requires the prosecution to prove the element beyond a reasonable doubt, and it may not be viewed as merely a matter of punishment.

There is a great difference between conviction of 2.5 grams but not more than 10 grams of any substance containing cannabis, which is a Class A misdemeanor, and more than 500 grams of any substance containing cannabis which is a Class 2 felony.

The weights of cannabis alleged to have been delivered or possessed by the defendant are material elements of the offenses. They must not only be proven at trial, but also must be alleged in the indictment.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari and Request for Summary Reversal should be granted. The decision below is palpably erroneous.

Respectfully submitted,

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APPENDIX A

OPINION
SUPREME COURT
OF ILLINOIS
United States of America

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the Eighth day of March in the year of our Lord, one thousand nine hundred and seventy six, within and for the State of Illinois.

Present: Daniel P. Ward, Chief Justice
Justice Walter V. Schaefer
Justice Thomas E. Kluczynski
Justice Howard C. Ryan
Justice Robert C. Underwood
Justice Joseph H. Goldenhersh
Justice Caswell J. Crebs
William J. Scott, Attorney General
Louie F. Dean, Marshal
Attest: Clell L. Woods, Clerk

Be It Remembered, that afterwards, to-wit, on the 18th day of March, 1976, the opinion of the Court was filed in

said cause and entered of record in the words and figures following, to-wit:

PEOPLE STATE OF ILLINOIS,	}	Appeal from Circuit Court St. Clair County
No. 47495, 47640, Cons.		
vs.		
RICKY MAYBERRY, et al.,		
Appellees		
CLELL L. WOODS		
Clerk of the Supreme Court		
State of Illinois		

Docket Nos. 47495, 47640 cons. — Agenda 5 —
November, 1975.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. RICKY MAYBERRY, Appellee. — THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. MICHAEL HURLEY, Appellee.

MR. JUSTICE CREBS delivered the opinion of the court:

These are appeals from orders of the circuit courts of Sangamon County and of St. Clair County, dismissing indictments against the defendants. Since the issues presented by the cases are virtually identical, the two cases have been consolidated for appeal.

The defendant Michael Hurley was charged in a two-count indictment with two violations of the Cannabis Control Act (Ill. Rev. Stat. 1973, ch. 56½, par. 701 *et seq.*). The first count of the indictment alleged that the defendant committed the offense of delivery of more than 30 grams but not more than 500 grams of a substance containing cannabis

in violation of section 5(d) of the Act (Ill. Rev. Stat. 1973, ch. 56½, par. 705(d)). The second count alleged that the defendant committed the offense of unlawful possession of more than 30 but not more than 500 grams of a substance containing cannabis in violation of section 4(d) of the Act (Ill. Rev. Stat. 1973, ch. 56½, par. 704(d)).

The defendant Ricky Mayberry was charged in separate indictments with three violations of the Illinois Controlled Substances Act (Ill. Rev. Stat. 1973, ch. 56½, par. 1100 *et seq.*). Each indictment charged the defendant with the offense of delivering 200 grams or more of a substance containing a derivative of barbituric acid in violation of section 401(a)(5) of the Act (Ill. Rev. Stat. 1973, ch. 56½, par. 1401(a)(5)).

The circuit court of Sangamon County dismissed the first count of the indictment against Hurley on the ground that the graduated penalty provision of the Cannabis Control Act is unconstitutional. The circuit court of St. Clair County dismissed the three indictments against Mayberry, holding that the graduated penalty provision in the Controlled Substances Act constituted a violation of the due process and equal protection clauses of the United States and Illinois constitutions. Each court held that the relevant act provided for punishment based upon the amount of a "substance containing" cannabis or a controlled substance rather than upon the amount of the pure substance sought to be controlled. The courts held that that classification scheme bore no reasonable relation to the legislative purpose of the acts.

Section 5 of the Cannabis Control Act, the portion of the Act relevant to the first count against Hurley, provides that:

"It is unlawful for any person knowingly to manu-

facture, deliver, or possess with intent to deliver, or manufacture, cannabis. Any person who violates this section with respect to:

(a) not more than 2.5 grams of any substance containing cannabis is guilty of a Class B misdemeanor;

(b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of a Class A misdemeanor;

(c) more than 10 grams but not more than 30 grams of any substance containing cannabis is guilty of a Class 4 felony;

(d) more than 30 grams but not more than 500 grams of any substance containing cannabis is guilty of a Class 3 felony;

(e) more than 500 grams of any substance containing cannabis is guilty of a Class 2 felony." (Ill. Rev. Stat. 1973, ch. 56½, par. 705.)

Section 401 of the Illinois Controlled Substances Act, the section under which Mayberry was indicted, provides in relevant part that:

"Except as authorized by this Act, it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this Section with respect to:

(a) the following controlled substances and amounts * * * is guilty of a Class 1 felony * * * :

* * *

(5) 200 grams or more of any substance containing a derivative of barbituric acid or any of the salts of a derivative of barbituric acid;

* * *

(d) any other amount of a controlled substance classified in Schedule III is guilty of a Class 3 felony. * * *

The Cannabis Control Act and the Controlled Substances

Act contain other sections with penalty provisions based upon the weight of a mixed substance rather than upon the weight solely of the substance sought to be controlled. (Ill. Rev. Stat. 1973, ch. 56½, pars. 704, 1401, 1402.) Whether this type of classification scheme is violative of the due process or equal protection clauses is the primary issue presented by these appeals.

Before reaching that issue it is necessary to consider the State's contention that the defendants did not have standing to raise the issue in the trial courts. The defendants reply that the State did not challenge their standing in the trial courts and should therefore be barred from raising the issue of standing on appeal. The general rule is that a party may not raise a question on appeal which was not properly presented to the trial court. (*People v. Curry*, 56 Ill.2d 162.) The reasoning behind that rule is that the trial court should have the first opportunity to consider any question that may arise in a case. In the instant cases, however, the trial courts did consider the issue of standing even though the State did not challenge the standing of the defendants. Each court held that the defendant did possess standing to raise the constitutional questions. Also, there is no indication that the defendants were led to refrain from presenting pertinent rebuttal evidence by the State's failure to argue the issue before the trial courts. For these reasons, we will consider the question of standing.

A party does not have standing to challenge the constitutional validity of a statutory provision if he is not directly affected by it unless the unconstitutional feature is so pervasive as to render the entire act invalid. (*People v. Palkes*, 52 Ill.2d 472.) A party who attacks a statute as unconstitutional must bring himself within the class aggrieved by the alleged unconstitutionality. (*People v. Bombacino*, 51 Ill.2d 17, cert. denied, 409 U.S. 912, 34 L. Ed. 2d 173, 93

S. Ct. 230.) The first question raised with respect to the issue of standing is whether the defendants brought themselves within the class of people allegedly aggrieved by the acts. The acts are alleged to be unfair in those cases in which the cannabis or controlled substance involved is not pure but is mixed with other substances. In those cases, the entire mixed substance is weighed to determine the seriousness of the offense. The State contends that nothing in the record suggests that Hurley was charged with anything but the delivery of pure cannabis or that Mayberry was charged with anything but delivery of pure controlled substances. The possibility that the substance delivered by Hurley may have been pure cannabis and that the substance delivered by Mayberry may have been pure controlled substances, however, does not destroy the defendants' standing to challenge the statute. The important fact is that Hurley was not indicted for the delivery of cannabis but for the delivery of a "substance containing" cannabis. Mayberry was not indicted for the delivery of controlled substances but for the delivery of "substances containing" controlled substances. Thus, to prove the offenses alleged, the State had no burden to prove the quantity of the pure cannabis or pure controlled substances involved. Nor was either defendant charged with the minimum offense under the statutory provisions cited in their respective indictments. Hurley was threatened with the possible conviction of a Class 3 felony if the State could prove that he delivered some substance weighing more than 30 grams and containing any quantity of cannabis. Mayberry faced the possible conviction of three Class 1 felonies if the State could prove that he delivered certain substances exceeding 200 grams in weight which included any quantity of a derivative of barbituric acid. Furthermore, in contrast to the factual circumstances present in several recent appellate court de-

cisions, we note that the defendants in the instant cases have not pleaded guilty to possession or delivery of a pure substance. (See, *e.g.*, *People v. Kline*, 16 Ill. App. 3d 1017, *aff'd*, 60 Ill.2d 246, and cases cited therein.) We find that under these circumstances the defendants were within the class aggrieved by the alleged unconstitutionality of the acts.

The State also argues that the trial courts erred in deciding the constitutional issues raised by the defendants because the defendants had not yet been convicted of any crime. Since trials of the defendants conceivably could have rendered the constitutional issues moot, the State asserts that the validity of the penalty provisions should not have been considered prior to entry of judgment following conviction. We find this argument to be without merit. One has standing to challenge the validity of a statute if he has sustained or if he is in immediate danger of sustaining some direct injury as a result of enforcement of the statute. (*Cramp v. Board of Public Instruction*, 368 U.S. 278, 7 L. Ed. 2d 285, 82 S. Ct. 275.) Once Hurley was indicted, he was in immediate danger of being convicted of a Class 3 felony pursuant to the enforcement of the Cannabis Control Act. When Mayberry was charged with three violations of the Controlled Substances Act, he was in immediate danger of being convicted of three Class 1 felonies pursuant to the enforcement of that act. Each defendant was faced with the necessity of defending against charges which would have been less serious had the penalty provisions complained of not been in existence. We find that the defendants were directly affected by the alleged unconstitutionality of the acts, therefore, and that they had standing to challenge the acts even though they had not yet been convicted.

The defendants contend that the acts are unconstitutional because they include classification schemes which

unreasonably discriminate against certain offenders of the acts. The Cannabis Control Act and the Controlled Substances Act classify offenders by providing that an offense becomes more severe as the weight of the substance involved increases. These classifications are not based upon the amount of pure cannabis or controlled substance involved but upon the amount of the substance containing the cannabis or controlled substance. Thus, it can be argued that violators of the acts are in a sense punished for the possession, manufacture or delivery of innocuous substances.

In determining whether a statutory classification violates the equal protection clause, we presume that the classification is valid and place the burden of showing invalidity upon the party challenging the classification. A classification scheme will be upheld if any state of facts may reasonably be conceived which would justify the classification. It is only required that there be a reasonable basis for distinguishing between the classes created by the legislation. (*People v. McCabe*, 49 Ill.2d 338.) In *United States ex. rel. Daneff v. Henderson*, 501 F.2d 1180 (2d Cir. 1974), the court considered virtually the same issues as those presented in this case. At issue was a New York statute proscribing the possession of dangerous drugs. The statute had a graduated penalty provision similar to the provisions in the Illinois Cannabis Control Act and Controlled Substances Act. The court noted in *Daneff* that dangerous drugs are generally marketed in a diluted or impure state. It was therefore held that it was not unreasonable or irrational for a legislature to deal with the mixture or compound rather than the pure drug. The court went on to state that "[T]he State cannot be expected to make gradations and differentiations and draw distinctions and degrees so fine as to treat all law violators with the precision

of a computer." (501 F.2d 1180, 1184.) We find the reasoning of the court in *Daneff* persuasive. Our legislature may have believed that any given amount of drug can be distributed to a greater number of people and thus have a greater potential to be harmful if it is mixed with another substance. While the soundness of that belief may be questionable, the determination is one for the legislature to make, and we cannot find that the classification schemes at issue have no reasonable basis. Also, the defendants have not demonstrated that a classification scheme based upon the amount of the pure drug contained in a given substance would be feasible. We therefore conclude that the classification schemes are not unconstitutional merely because they are based on the amount of the "substance containing" the cannabis or controlled substance rather than upon the pure cannabis or controlled substance.

For the foregoing reasons we ^{reverse} the decisions of the circuit courts of Sangamon and St. Clair Counties and remand the causes with directions that the indictments be reinstated.

*Reversed and remanded,
with directions.*

APPENDIX B

**IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
OF ILLINOIS
SANGAMON COUNTY, SPRINGFIELD, ILLINOIS
GENERAL DIVISION**

PEOPLE OF THE STATE
OF ILLINOIS,

Plaintiff,

vs.

MICHAEL T. HURLEY,

Defendant.

No. 75-CF-54
Filed April 17, 1975
Edward W. Ryan,
Clerk

ORDER

Now this cause comes on for hearing on the matter of the Defendant's Motion to Dismiss Count I of the indictment returned in the above cause. Count I of the indictment charges the Defendant with the Delivery of Cannabis by knowingly delivering more than thirty grams but not more than five hundred grams of a substance containing cannabis, in violation of Section 705(d) of Chapter 56½, *Illinois Revised Statutes* (1973).

The Court having heard the arguments of counsel finds that:

1. The statutory provision under which the Defendant was charged in Count I of the indictment makes the delivery of between thirty and five hundred grams of a substance containing cannabis a Class Three Felony.

2. The Defendant has entered a plea of not guilty to Count I of the indictment.

3. By Motion to Dismiss duly filed, the Defendant has challenged the constitutionality of the statutory provision charging him in Count I with Delivery of 30-500 grams of a substance containing cannabis as depriving him of due process and equal protection of the laws.

4. By Motion to Dismiss duly filed, the Defendant has further challenged the constitutionality of *Ill. Rev. Stat.*, Chap. 56½, Sec. 705(d) on the grounds of vagueness and indefiniteness, contending that he cannot properly know the nature of the charge against him, nor properly obtain proof to prepare for defense.

5. By Motion to Dismiss duly filed, the Defendant has also challenged the constitutionality of *Ill. Rev. Stat.*, Chap. 56½, Sec. 705(d) for vagueness, alleging that the amount chargeable for a felony by weight is incapable of ascertainment by scientific evidence.

6. The constitutional provisions herein involved are the Fourteenth Amendment to the Constitution of the United States and the Fifth Amendment to the Constitution of the United States.

7. The Defendant is injuriously affected by the statutory provisions and has standing to assert the present constitutional challenge.

8. The Court has considered the case law dealing with the issues raised and has found no case which is dispositive of the issues.

9. The State statute has established classifications of offenses based upon the quantity of substance delivered without regard to the weight or percentage of the cannabis contained therein.

10. The General Assembly has the power to make classifications in the exercise of its police power. However, such classifications must be reasonably related to the purposes sought to be accomplished.

11. The purpose of the statutory provision herein challenged is to control delivery of substances containing cannabis through the imposition of criminal sanctions.

12. The classifications in question do not reasonably relate to the accomplishment of said purpose.

13. Therefore, the statute herein involved is unconstitutional and the Motion to Dismiss should be allowed.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss Count I of said indictment should be and the same is hereby allowed and said indictment is hereby dismissed.

ENTER: April 17, 1975

/s/ Simon L. Friedman
Judge

APPENDIX C

**IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
OF ILLINOIS
SANGAMON COUNTY, SPRINGFIELD, ILLINOIS
GENERAL DIVISION**

PEOPLE OF THE STATE
OF ILLINOIS,

Plaintiff,

vs.

MICHAEL T. HURLEY,

Defendant.

No. 75-CF-54
Filed Oct. 15, 1975
Edward W. Ryan,
Clerk

ORDER

Now this cause comes on for hearing on the matter of the Defendant's Motion to Dismiss Count II of the indictment returned in the above cause. Count II of the indictment charges the Defendant with the Possession of Cannabis by knowingly possessing more than thirty grams but not more than five hundred grams of a substance containing cannabis, in violation of Section 704(d) of Chapter 56 $\frac{1}{2}$, *Illinois Revised Statutes* (1973).

The Court having heard the arguments of counsel finds that:

1. The statutory provision under which the Defendant was charged in Count II of the indictment makes the possession of between thirty and five hundred grams of a substance containing cannabis a Class Four Felony.

2. The Defendant has entered a plea of not guilty to Count II of the indictment.

3. By Motion to Dismiss duly filed, the Defendant has challenged the constitutionality of the statutory provision charging him in Count II with Possession of 30-500 grams of a substance containing cannabis as depriving him of due process and equal protection of the laws.

4. By Motion to Dismiss duly filed, the Defendant has further challenged the constitutionality of *Ill. Rev. Stat.*, Chap. 56½, Sec. 704(d) on the grounds of vagueness and indefiniteness, contending that he cannot properly know the nature of the charge against him, nor properly obtain proof to prepare for defense.

5. By Motion to Dismiss duly filed, the Defendant has also challenged the constitutionality of *Ill. Rev. Stat.*, Chap. 56½, Sec. 704(d) for vagueness, alleging that the amount chargeable for a felony by weight is incapable of ascertainment by scientific evidence.

6. The constitutional provisions herein involved are the Fourteenth Amendment to the Constitution of the United States and the Fifth Amendment to the Constitution of the United States.

7. The defendant is injuriously affected by the statutory provisions and has standing to assert the present constitutional challenge.

8. The Court has considered the case law dealing with the issues raised and has found no case which is dispositive of the issues.

9. The State statute has established classifications of offenses based upon the quantity of substance possessed without regard to the weight or percentage of the cannabis contained therein.

10. The General Assembly has the power to make classifications in the exercise of its police power. However, such classifications must be reasonably related to the purposes sought to be accomplished.

11. The purpose of the statutory provision herein challenged is to control possession of substances containing cannabis through the imposition of criminal sanctions.

12. The classifications in question do not reasonably relate to the accomplishment of said purpose.

13. Therefore, the statute herein involved is unconstitutional and the Motion to Dismiss should be allowed.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss Count II of said indictment should be and the same is hereby allowed and said indictment is hereby dismissed.

ENTER: October 15, 1975

/s/ Simon L. Friedman
Judge